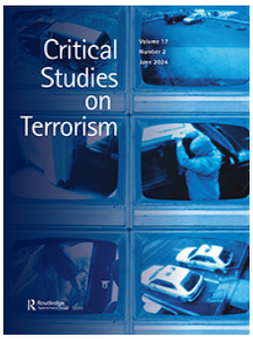

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Counterterrorism, political anxiety and legitimacy in postcolonial India and Egypt

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ABSTRACT

The post 9/11 global proliferation of counterterrorism legislation is increasingly being interpreted as part of a longer story of colonialism. Scholars have shown how expansive counterterrorism can be interpreted not merely as an exceptional state of violence in situations where the rule of law and guarantees of ordinary civil liberties are suspended, but as a form of law-making that draws upon colonial logics and frameworks of governance. However, a major lacuna in this scholarship is the lack of attention to counterterrorism laws in postcolonial states and their negotiations with colonial logics of law-making. This article makes a postcolonial contribution to Critical Terrorism Studies and International Politics by showing how colonial logics of counterterrorism are repurposed by postcolonial states in comparable ways. By comparing counterterror laws in two postcolonial states, India and Egypt, this article shows how colonial logics intersect with nationalist ideologies, postcolonial anxieties, as well as an attempt by postcolonial states to seek international legitimacy post 9/11 vis-a-vis the War on Terror. In both states, counterterror laws are weaponised to target civil society activists, journalists, and religious, ethnic and other minorities in comparable ways. This article, therefore, challenges the centrality of 9/11 and state of exception/emergency in the framing of counterterror laws. In so doing, it advances knowledge of counterterrorism vis-à-vis postcolonial engagements with colonial epistemes and "normal" practices of security.

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Introduction

Scholars of International Politics have outlined the colonial genealogies of the discourse and practice of counterterrorism. Doty (1996), Gregory (2004) and Khalili (2012) emphasised the colonial framings of counterterrorism policies and laws and critiqued the emphasis on 9/11 as a "turning point" in the development of global security. Scholars have argued that a focus on this moment significantly shapes our understanding of the violence of terrorism as directed towards a vulnerable "West" (see also Thobani 2007). As Gregory (2004, 16) argued, when we do not consider counterterrorism's links to its colonial past, we risk downplaying incidences of state violence such as Guantánamo

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Bay as "exceptional": "It is important not to allow the spectacular violence of September 11, or the wars in Afghanistan, Palestine, and Iraq, to blind us to the banality of the colonial present and to our complicity in its horrors." Hence, Gregory and others argued that the dominant theoretical framework of counterterrorism over the past twenty years, namely exceptionalism, is insufficient to account for the complexities of global and historical processes and the blurred lines between law and violence.

By turning to colonial histories, postcolonial and feminist scholars have emphasised the normalised and continuous nature of violence in the everyday lives of colonial subjects, showing how the violence of colonialism was not "exceptional" or an aberration (Mbembe 2003; Said [1978]2003; Thobani 2007; Yegenoglu 1998), thus challenging state of exception framings. Many of these subjects and communities were framed as "deviant" groups such as criminal tribes, pirates, and fanatics, allowing colonial powers to derive authority and control over them (MacKay 2023; McQuade 2020; Nijjar 2018; Singh 2012; Whittaker 2015). Legal scholars of empire have also drawn our attention to the ways in which counterterrorism laws draw upon colonial hierarchical law-making (Hussain 1999, 2007a, 2007b; Martel 2017; Reynolds 2017; Suresh 2023) used to quell anticolonial nationalist groups. This violence continues to shape global and national forms of counterterrorism (Berda 2020; Elliot-Cooper 2021; Sen 2022).

However, a lacuna in this scholarship on counterterrorism and colonialism within International Politics, Critical Terrorism Studies and Critical Security Studies, is the relative inattention paid to the experiences of postcolonial states (Chukwuma 2022; Khan 2021; Oando and Achieng 2021).[1] Indeed, Rao (2020) reminds us that for postcolonial work to be meaningful it must "be attentive to shifts in power, including those that enable formerly colonised states to become colonial in their own right".[2] This article therefore presents an interdisciplinary contribution to Critical Terrorism Studies and International Politics scholarship through a comparative analysis of how the practice of counterterrorism is mediated by colonial logics of law-making in postcolonial India and Egypt. In so doing we utilise legal scholarship which provides new ways for politics scholars to comprehend architectures of counterterrorism as normal practices of governance.

Our main argument is that counterterrorism law provides these postcolonial states with a veneer of legitimacy and authority in the violent actions they take to resolve their political anxieties over sovereignty and statehood, in a manner that must be understood in relation to the governing logics and epistemologies of European colonialism. However, following theories that emphasise postcolonial agency (Ismail 2006; Rao 2020; Salem 2020) and view counterterrorism as a site of negotiation rather than a colonial totality (Suresh 2023) we find that both states' relationship with counterterrorism takes new, more ambiguous and changeable forms as they navigate uncertain political terrain since independence. Both states have suffered from a lack of hegemony from their publics since independence, in part because of their reliance on colonial structures, and thus have had to fashion new ways of navigating political terrain. In both states, therefore, we see negotiations with colonial security logics and their deployment in new forms on the backdrop of global counterterrorism.

Colonial security laws created special administrative avenues for the differential treatment for "dangerous" subjects (Hussain 2007b) while also providing for the collective detainment, criminalisation and punishment of groups, communities and areas. British colonialism produced such "difference" along the lines of class, caste, race, religion, ability,

gender and sexuality. As we show, such "difference" has assumed new forms in postcolonial states' counterterrorism efforts yet continues to underscore the logics of "threat" and the deployment of more laws to combat it. These markers continue to underscore "criminal" and "immoral" communities and have comparable effects of victimising and silencing dissident voices against the state such as civil society activists, journalists, and marginalised communities. The ways in which these laws and policies imagine "threats" were never lost in the development of international society but instead are the same imagery upon which the very existence of counterterrorism laws depend. As we demonstrate, these postcolonial states' use of counterterrorism replicates European colonial powers' own systematic development of hierarchical security laws and policies targeting broadly termed "threats" throughout periods of political instability, all the while claiming that such laws provided a necessary humanising and civilising effect. While there are parts of the international community that seek to hold states globally to account for the abuse of human rights through counterterrorism, it is precisely because counterterrorism has developed from colonial forms of security that it has such incomparable political currency in the globe today.

This article carries out a critical comparative genealogy of India and Egypt and their historical and present-day encounters with counterterrorism, political anxiety and legitimacy, using archives and texts available in the public domain. This includes an analysis of British colonial security architecture forged over periods of political anxiety, and how this colonial experience has shaped counterterrorism in both states today. While India and Egypt both experienced British occupation, extraction, administration and, in postcolonial times, the debilitating effects of structural adjustment policies, there are of course significant differences between the modalities of colonial rule in each context. Colonial rule in India had a profound influence on notions of the law, legality, and the relationship between law and society (McQuade 2020). In comparison, the British occupation of Egypt was relatively short-lived, scholars argue that the British could not penetrate the entirety of Egyptian society and that local government was able to retain a portion of its own decision making (Brown 1995; Ezzat 2020), thus complicating the notion of colonial legacies. Furthermore, the differences in both states regarding religion (India as a Hindu nationalist state and Egypt as a Muslim majority state) have led to different negotiations with the global norm of Islamophobia.

In both states we find that the colonial production of excessive law-making, or a "hyperlegality" (Hussain 2007b), bolsters and legitimises the securitisation of marginalised communities and a broad framing of "terrorism". The same imaginaries of such communities as "collectively" criminal and as immoral threats to the stability of the nation persist. At the same time, these states have reappropriated counterterrorism to suit their postcolonial dynamics. In India, we see more of a replication of the hierarchies of the colonial security state in which the Hindu nationalist BJP party consistently relies upon colonial security measures to counter forms of insurgency, justifying its nationalist, Islamophobic sentiments, and securitising its territory (McQuade 2020, 244). However, in Egypt, a Muslim majority nation, counterterrorism plays out through a relationship of ambiguity with the state's biggest political rival, the Muslim Brotherhood. In order to hold together these differences, we follow the work of Ismail (2006), Rao (2020) and Salem (2020) who explore how colonial and modern temporalities are blended in postcolonial states in ways that disrupt linear concepts of progress.

By drawing attention to how postcolonial agency negotiates with colonial structures, therefore, this article challenges the centrality of the temporal and spatial location of 9/11, and along with it, the state of exception framing which has been scrutinised by Neal (2012, 2019). In so doing, we provide an alternative approach to scholarship that draws defiant lines between "liberal" and "authoritarian" states or the Global North/Global South. Furthermore, this article provides evidence as to how colonial logics and structures embedded within the international system provide justification for, and shield, forms of violence under new guises. The article is divided into three sections. The first section explores the relationship between counterterrorism and legitimacy in postcolonial states. The second section provides analysis of security and legitimacy in colonial and postcolonial India; and the third section provides the same analysis for Egypt.

Counterterrorism, (post)colonialism and legitimacy

As scholars show, concepts of "extremism" and "terrorism" have their origins in colonial epistemologies. These colonial logics of law-making persist across postcolonial states. The very concepts of statehood and sovereignty have been formed in relation to the state's "insurgent" other. In colonial logics of governance, the "other" was often constructed in relation to the narratives of colonial subjects and anti-colonial groups as ontologically "different" based upon logics of race, caste, gender, and class (Mbembe 2003; Said [1978] 2003). Nineteenth-century British narratives framed the "collective" actions of anti-colonial groups as significantly different forms of criminality based on the notion that these were an ontologically different – more violent – set of people (Singh 2012; Whittaker 2015). Anti-colonial sentiment was thus framed as threatening the integrity of the state, and hence a heightened, more serious, form of violence. As scholars show, this thinking therefore legitimised the development of different, "special" legal structures for so-called criminal groups. Postcolonial state structures often replicate this colonial logic as they build upon and reframe a colonial myth of racialised collective criminality. Scholars of race and Critical Security Studies (Abu-Bakare 2020; Elliot-Cooper 2021; Groothuis 2020; Meier 2022; Nijjar 2018; Schotten 2018) demonstrate how racialisation, forged through colonial "difference", is at the heart of present-day European and American laws that criminalise terrorism. Others have detailed how present-day counter-insurgency strategies are structurally formed from imperial military practices (MacKay 2023) and are based upon this construction of difference, representing an "extension of the colonial hostility toward anti-colonial factions" (Sen 2022, 210).

The production of "terrorist" subjects, however, was not an exceptional practice of the colonial state, but instead was central to its very administrative lifeform, bolstered through moments of political anxiety over colonial sovereignty. Legal scholars show how this colonial epistemic violence is woven structurally into state practices. For example, as Esmeir (2012) explains, colonial violence bound colonial subjects to modern, western institutions such as law and thus shapes the normal lives of racialised, gendered and classed communities. Neocleous (2007) shows how hierarchical violence of colonial emergency laws has been normalised over the years through processes of liberalisation to create the basis upon which counterterrorism can so easily target marginalised groups.

The framing of the colonial state as a state of exception has also been reframed by legal scholars who argue that the difference between emergency law and the rule of

law is overstated, and that the notion of the law as a totality does not provide room for any forms of resistance or alternative engagements. Emergency measures in the colonies were characterised by an abundance of legal regulations meaning that the purported "lawless" spaces in colonial "states of emergency" were in fact some of the most highly regulated (Hussain 1999, 2007a, 2007b; Johns 2005; Martel 2017; Reynolds 2017; Suresh 2023). Regulation works through overlapping new administrative measures that tighten the space in which subjects can live. Hussain does away with the distinction between the rule of law and emergency law by conceptualising the colonies as spaces for the development and expansion of new administrative avenues within the law that could enable expanding classifications of "the criminal" (Hussain 2007b). He terms this phenomenon "hyperlegality". Emergency law and bureaucratic tools are understood by Hussain as fragments of the same legal-bureaucratic system in which new classifications of persons justify new, increasingly pre-emptive "special measures" (Hussain 2007b). The use of fragmented and hierarchical legal orders is a form of disciplinary rule and a technique of governance that has its origins in the colonial use of various emergency orders and legal codes as constitutive of a "civilising" set up and is premised upon categorisations of individuals as human/nearly human. The use of fragmented and hierarchical legal orders persists through the normalisation of emergency codes into more permanent forms of counterterrorism legislation today (Berda 2020; Neocleous 2006, 2007).

As Suresh (2023) explores, the conceptual framing of hyperlegality also provides an understanding of counterterrorism a site of ambivalence, negotiation and even resistance. Unlike the state of exception which imagines subjects of exceptional treatment such as counterterrorism laws as "bare life" (Agamben 2005), outside of the political space of the state, Suresh (2023) shows that the "everyday" of counterterrorism, in this instance in India, is multiple and varied, and does not represent a totalising colonial voice, even despite colonial continuities within the Indian legal system. While counterterrorism is indeed violent and oppressive, Suresh demonstrates that even within terrorism trials, processes of meaning making are littered with ambiguity, and even life. This understanding corroborates Critical Terrorism Studies work that demonstrates how sites of security are processes of negotiation, ignoring and compliance with counterterrorism agendas (Busher, Choudhury, and Thomas 2019; Kaleem 2021; Spiller et al. 2022) and provides a postcolonial and non-western framing to Neal's (2019) conceptualisation that securitisation is not an exceptional, hidden process, but indeed, is a core aspect of normal professional political life and central to state governance.

However, it remains the case that the majority of work on counterterrorism and colonialism within Critical Security Studies and Critical Terrorism Studies analyses how western states have drawn through colonial logics in their present-day methods of policing and law-making; the situation of postcolonial states does not receive sufficient attention (work that is doing this includes: Abdelrahman 2017; Abozaid 2022; Berda 2020; Brankamp and Glück 2022; Chukwuma 2022; Oando and Achieng 2021, McQuade 2020; Parashar and Schulz 2021; Whittaker 2015). In this article, we go beyond excavating the colonial genealogy of counterterrorism laws and show how colonial logics of governance are mobilised by postcolonial states and how they intersect with a range of nationalist ideologies, postcolonial anxieties, and an imperative of the postcolonial state to acquire international legitimacy. In so doing, we add to new debates over how colonial logics and

structures embedded within postcolonial states provide justification for violence, and further, how counterterrorism itself is a site of negotiation for shifting political purposes.

Processes of decolonisation throughout the twentieth century saw many formerly colonised states coerced into adopting European governmental and security structures as a means to gain recognition within the early formations of international institutions (Anghie 1999; Getachew 2019; Salem 2020). At the same time, elite classes within these formerly colonised states took up the reins of power, some of whom had themselves worked closely with the colonial administration (Guha 1997). These elite classes thereafter facilitated the uptake of many colonial political concepts and legal structures which enabled them to deploy forms of colonial security against broad swathes of civil society framed as "immoral" and "criminal" as a means to stifle dissent. As Guha (1997) demonstrated, the very makeup of the postcolonial state and its reliance upon dominance and authoritarianism is formed from the colonial period which has also prevented many formerly colonised states from achieving hegemony among their own populations today (Salem 2020). For Rao (2020, 19), when it comes to forging independent postcolonial identities, many such states have reified their precolonial pasts "into a spatiotemporal location that is constructed as entirely indigenous, uncontaminated by contact with the West or indeed any other external influence". Postcolonial states therefore often draw upon a changeable blend of authoritarian and liberal tools and further carry through precolonial tools to suit new neoliberal, security-driven landscapes (Abdelrahman 2017; Ismail 2006).

When exploring the politics of counterterrorism in postcolonial states, an approach that considers both colonial legacies and postcolonial agency is therefore significant. Critics of postcolonial work suggest that scholars often focus too much upon the legacies of colonialism and in so doing, effectively reaffirm Eurocentric frameworks (Parashar and Schulz 2021). As Ismail (2006) notes in her eloquent exploration of the everyday state in postcolonial Egypt, there are limitations in uncritically using European theories to comprehend the situation of postcolonial states. For instance, Foucauldian theories on governmentality cannot explain the dual situation of self-surveillance and a policed state in Egypt (Ismail 2006). Such a focus also denies the existence of indigenous political theories in their own right, as Salem (2020, 14–18) notes when referencing the longstanding yet "lost" body of Arab Marxist thinking that provides a productive, contextualised engagement with what is normally considered a squarely Western theory. As Ismail (2006) suggests, we must remain alert to the shifting modalities at play in postcolonial states: "We need to avoid adopting a deterministic, sequential, or linear view of state development, one that proceeds from the view that the liberal project of state and the police project are mutually exclusive" (Ismail 2006, xxx-xxxi).

When investigating the ways in which counterterrorism and coloniality intersect for formerly colonised states, the concept of legitimacy is particularly instructive. The adoption of European framings of statehood, sovereignty, and nationalism throughout decolonisation processes provided formerly colonised states with means to gain independence, legitimacy and recognition within the international community; however it also meant leaving behind more radical decolonial imaginings of freedom, and with it, the trust of many of their citizens (Anghie 1999; Salem 2020; Sen 2022). Postcolonial legitimacy, therefore, is bound up with twentieth-century decolonisation processes and the adoption of global security norms. Berda (2020, 564) argues that upon independence,

Israel and India both reframed British colonial tools, "demarcating boundaries of national belonging that legitimated differentiated use of executive power against different types of citizens" and that in both states, counterterror legislation presents a form of legitimacy through the formalisation of disparate colonial structures in a legal setting (Berda 2020). As Gani (2019) shows, even non-state anti-colonial groups such as the Muslim Brotherhood in Egypt, which began as an organisation that shunned western framings of nationalism and statehood, ended up adopting western-inspired concepts to gain legitimacy and to challenge the government. This shows the bind through which international legitimacy holds anti-colonial groups and postcolonial states.

At the same time, a number of formerly colonised states have found it difficult to forge consent and hegemony with their publics, which Salem links in part to the continued reliance upon colonial structures (Salem 2020, 31–32). These postcolonial states have drawn through various colonial logics and structures but have reimagined them in their post-independence context, producing and corroborating new global versions of legitimacy. In both states, colonial notions of immorality and extremism have been redeployed in ways that continue to mark certain classed, racialised and gendered communities, but are also stretched to accommodate the needs of the independent postcolonial state. This, in turn, means that our understandings of the political uses of counterterrorism as a means to forge legitimacy must adapt to reflect varying postcolonial contexts and the ambiguity of counterterrorism as a fluid legal site (Suresh 2023). In this article we therefore understand postcolonial states' strategies of forging legitimacy and the related use of counterterrorism as necessitating historical contextualisation. We understand legitimacy as encompassing and stretching of colonial logics in new ways that are acceptable in an independent postcolonial state and a neoliberal globalised climate. Postcolonial legitimacy is therefore forged with respect to both the international community during and after the Global War on Terror and with respect to hegemonic local ideologies in postcolonial contexts. Indeed, ultimately legitimacy is not sought from marginalised communities.

Colonial logics and postcolonial legitimacy in India

Legal mechanisms and colonial logics used to regulate terrorism and criminalise anti-colonial dissent have persisted in a range of ways in postcolonial India, affording the Indian state with a veneer of legitimacy in the eyes of the international community. These have been refashioned to suit the imperatives of the postcolonial state. The postcolonial state has deployed and refashioned notions of collective criminality, hyperlegality, and extraordinary legislations based on suspicion and paranoia to construct a narrative of legitimacy in various ways. First, these colonial logics have been mobilised and refashioned to gain legitimacy for a territorially, united postcolonial India in the context of challenges to this idea from diverse populations. Furthermore, the state has used extraordinary legislation and counterterror laws to gain legitimacy in the eyes of the ruling and culturally powerful upper caste elite often at the cost of religious and ethnic minorities. Second, colonial logics of collective criminality have also been mobilised to gain legitimacy in the international system on the backdrop of a discourse of global "Islamic terrorism". Third, the global discourse of "Islamic terrorism" comes together with Hindu nationalism's ideological construction of the "Muslim other" in the state's legitimating

discourse for counterterrorism. Fourth, collective action against the state is criminalised by further expanding and augmenting notions of collective criminality that target not only religious and ethnic minorities but civil society activists, political opponents, and dissidents. Fifth, colonial logics of collective criminality have a bearing on the postcolonial state's construction of morality.

Political anxiety in British colonial India

The colonial state's functioning in India exemplifies legal theorist Hussain's 2007a understanding of how ordinary law-making and emergency law were intimately woven together in the exercise of colonial sovereignty guided by anxieties around "threats" to the empire. Subaltern historian Ranajit Guha characterised British rule in India as a form of "dominance without hegemony" (1983). The colonial state existed in a permanent state of exception. Moments of challenge to colonial authority led to the imposition of emergency measures and increased surveillance and thereby enhanced criminalisation of the colonial subject (Pincince, 2014). Following the 1857 uprising, the passage of the Indian Council Act of 1861 gave extraordinary powers to the Governor-General of India to legislate outside the pale of ordinary law-making processes by issuing ordinances to ensure "the peace and good government of India" (Kalhan et al. 2006, 126). Subsequently, the Government of India Acts 1919 and 1935 also granted similar emergency powers to the Governor-General.

As such, colonial rule in India was both anxious and violent (McQuade 2020, 24). Over the course of the nineteenth century, colonial officials were anxious about secret conspiracies at the margins of imperial authority which only led to the further expansion and consolidation of colonial rule through spectacular and everyday violence (McQuade 2020, 25). This anxiety and paranoia of colonial officials was manifested in forms of collective punishment that targeted entire communities for "real or imagined offences" (McQuade 2020, 25). A logic of colonial difference, bolstered by "scientific" theories of racism, enabled colonial rule to represent entire communities as sitting outside the ambit of the rule of law (McQuade 2020, 25). Hence, categories of thugs, pirates, criminal tribes, terrorists, and fanatics became the targets of the colonial exercise of emergency sovereign power (McQuade 2020; Silvestri 2019). Throughout the course of the nineteenth century, British colonial rule derived its authority through identification and control of "deviant" groups such as criminal tribes, pirates, and fanatics (McQuade 2020). Due to a lack of knowledge about local populations, regional practices, fanatics, and criminal tribes, colonial officials drew upon stereotypes about the "barbarism, violence, and religious excess of indigenous society" (McQuade 2020, 32). The construction of racialised categories of collective criminality proved to be ultimately important in policing "new extraordinary forms of 20th century violence such as political dacoity and terrorism" (McQuade 2020, 32). Silvestri shows how twentieth century British colonial intelligence officials largely relied on the cultural stereotypes about thugs dacoits, and criminal tribes to police "Bengali terrorism" (Silvestri 2019). A veneer of rational and objective investigation concealed colonial stereotypes of crime, criminality, and sedition (Silvestri 2019).

During the First World War and the inter-war years, the colonial state enacted a slew of emergency laws to deal with "security concerns" that ultimately served to counter the rising tide of anti-colonial nationalism (McQuade 2020). In 1915, the colonial state enacted

the Defence of India Act which authorised civil and military authorities to "detain individuals" or impose restrictions on personal liberty based upon "reasonable grounds" of suspicion that a person's conduct was "prejudicial to public safety". A similar legislation was enacted in 1939. The state of emergency during the war also provided the colonial state with an opportunity to exercise powers of "executive detention" against revolutionary organisations (McQuade 2020). Extraordinary powers justified during the war-time emergency were extended into non-emergency periods. In 1919, the colonial government enacted the Anarchical and Revolutionary Crimes Act, commonly known as the "Rowlatt Act" which perpetuated measures of preventive detention, restrictions on the freedom of movement of persons suspected of involvement in revolutionary or anarchical movements, as well as designation of specific parts of the country as "affected areas" connected to "criminal offenses" (Kalhan et al. 2006). In the twentieth century, "terrorism" became a useful rhetorical tool used by the colonial state to justify emergency legislation both to the British Parliament and the Indian public; colonial officials sought to portray revolutionaries as "sinister" assassins who indulged in murder and mayhem (McQuade 2020). Colonial officials would often claim that draconian legislations such as Bengal Criminal Law Amendment act or the Suppression of Terrorist Outrages Act were directed against "enemies of their own country" (McQuade 2020). The British colonial power in India therefore developed new legal and extra-legal powers through which they could detain increasing categories of "suspect" subjects throughout periods of political anxiety.

Postcolonial law and legitimacy

In postcolonial India, the upper caste ruling elite mobilised the colonial infrastructure of anti-terror laws and emergency governance to create a panoply of laws governing national security and terrorism (Hansen 1999; McQuade 2020). The state's use of emergency legislation in general and counterterrorism legislation in particular has been tied the anxieties about territorial sovereignty, the aims of acquiring legitimacy from the upper caste elite for a state based on law and order, and the consolidation of a united, postcolonial state. In the run-up to independence (1947), the project of a united postcolonial independent Indian state was a contested concept; it was challenged by lower caste groups, Muslims, and tribals. These marginalised groups were doubtful of their place and status as citizens in a newly independent, postcolonial state dominated by the upper caste Hindu elite (Brass 1994). These challenges to the project of a territorially united India prompted a postcolonial anxiety about territorial sovereignty. The invocation of counterterror laws in postcolonial India focused on questions of law and order and rational procedure; this "law" only appealed to the upper caste and "middle-class society" while repressive means were regularly used to govern marginalised communities (McQuade 2020, 243).

The range of emergency and security legislations as well as counterterror laws that were enacted in twentieth century India was largely shaped by this anxiety about territorial sovereignty. These laws resonate with the colonial state's logic of hyperlegality even as they were refashioned by the postcolonial elite to acquire legitimacy for the newly independent postcolonial state. This is manifested in the emergency legal provisions of the Constitution of India as well as the range of preventive detention laws enacted by the state governments following independence. The Constitution of India, which came into force in

1950, authorised the President to declare a national emergency in a situation that involved a grave threat to the security of India or any part of its territory due to war, external aggression, or internal disturbance or the imminent danger of internal disturbance. Apart from emergency powers, the Constitution also authorised both the Union and the state governments to enact laws for preventive detention (Austin 1999; Jinks 2001).

Renowned legal scholar Upendra Baxi (1982) points out how the Indian legal system is constituted by a preventive detention system that operates as a parallel legal system along with the criminal justice system. Preventive detention thus functions as a structuring logic that shapes a concatenation of laws that are invoked purportedly to counter security threats. Baxi argues that the preventive detention system aims at repressing "political and ideological opposition", curtails due process, and depends on extraordinary decision-making by the executive (Baxi 1982). As Suresh (2023) points out, however, this legal difference should not be understood as an "exceptional" form of law-making for terrorism offences, but instead as evidence of the law itself being fluid, ambiguous and able to stretch to suit different settings.

In the functioning of this overlapping system of emergency laws that regulate terrorism in India, we can discern the changing imperatives of the postcolonial state as it enacts a panoply of legislations. In the 1950s–60s, emergency provisions in the law were primarily a reaction to the anxieties of the postcolonial Indian state about territorial sovereignty, unity, and integrity, especially in the aftermath of the Partition. In the 1980s, counterterror legislation was a response to the threat of secessionism and insurgencies in Punjab. Post 9/11, the enactment of counterterrorism legislation has been explicitly linked to a global narrative of the emergence of "Islamic terrorism" as well as the Hindu right's renewed obsession with national security and territorial integrity. In each of these moments, the postcolonial state became intimately involved with the project of definition, regulation, specification, and penalising of what it construed as terrorism or an unlawful activity through emergency, extraordinary legislation. Colonial notions of hyper-legality served as a framework onto which the postcolonial state's own anxieties about territorial sovereignty, global terrorism, and national integrity played out. These anxieties have led not only to excessive legislation but also to an expanding scope of criminality.

The Parliament enacted the Unlawful Activities Prevention Act (UAPA) 1967, an Act that has currently acquired the character of counterterror legislation in contemporary India. This Act allowed the Union government to ban any unlawful association involved with any action "whether by committing an act or by words, either spoken or written, or by signs or visible representation or otherwise" that "disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India". In postcolonial India, criminal laws that were specifically meant to target "terrorism" were enacted during the 1980s in response to a surge of political violence and secessionism in the state of Punjab. In 1984, the Parliament passed the Terrorist Affected Areas (Special Courts) Act. This Act established special courts which were meant to deal with "scheduled offences" related to terrorism in areas designated "terrorist affected" by the central government for specified time periods. These provisions were also imported into the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1985, a counterterrorism law which applied across the country. Hence, we see how moments of enactment of emergency legislation and counterterrorism legislation are motivated by the anxieties about the putative loss of territory and sovereignty due to insurgencies and internal conflicts.

These moments of invocation of emergency mobilised colonial infrastructures of law-making that are based upon designation of particular areas and communities as prone to terrorism and violence. This is an instance of the postcolonial state weaving together nationalist concerns of territorial sovereignty and colonial tools of governance in crafting counterterrorism laws. In India, though the formal declaration of emergency has not happened frequently, a plethora of emergency legislations have been used to regulate national security and terrorism. These legislations were enacted by both the state and the Union governments. In these moments, a colonial logic of hyperlegality is refashioned to speak to a postcolonial anxiety about territory and unity of the nation.

Hindu nationalism, international system, and "Islamic terrorism"

The postcolonial Indian state refashioned colonial logics of governing terror as it negotiated with global and nationalist imperatives to counterterrorism. The hyperlegality of colonial statecraft as manifested in the excessive enactment of emergency, counterterror legislation as well as colonial logics of collective criminality were refashioned by the postcolonial state as a means of seeking legitimacy on a global scale as well as implementing a Hindu nationalist vision of the Indian state.

From the 1990s onwards, the Hindu-nationalist political party BJP has focused on the issue of "Islamic terrorism" in several election campaigns (Jaffrelot 1996).[3] Hindu nationalists highlighted the purported threats to national integration and national security due to an armed insurgency in Kashmir and Muslim immigration from Bangladesh. In 2000s, these domestic security logics, shaped by Hindutva's political ideology converged with the global discourse of terrorism that was predominantly focused on "Islamic terrorism". The Indian state's enactment of counterterror laws post 9/11 was shaped by the state's need to gain legitimacy in the international system as an ally in the War on Terror, and a discourse of "Islamic terrorism" propelled by Hindu nationalism (Sinha 2021).

Following 9/11, several states enacted counterterrorism legislation after the passage of the UN Security Council Resolution 1373 of 2001. In India, the paranoia about "Islamic terrorism" and India's need to position itself as an adversary of terrorism in the international system led to a flurry of legislative activity purportedly meant to come down harshly on terror. In March 2002, the Parliament enacted the Prevention of Terrorism Act (POTA) 2002. Unlike the earlier anti-terror and preventive detention legislations which were justified as a response to domestic problems of insurgency and terrorism, POTA was framed as a legislation necessitated by the upsurge of cross-border terrorist activities and the emergence of global terrorism. In 2004, the newly elected United Progressive Alliance government repealed POTA but several draconian provisions of POTA were incorporated into a newly amended Unlawful Activities Prevention Act (UAPA) (Singh 2006). In his speeches, Narendra Modi, Prime Minister of India, and the leader of the Hindu nationalist Bharatiya Janta Party, has continually invoked terrorism as a "global" threat that needed a strong and united response from India.[4] In these moments of refashioning of the logics of global counterterrorism and Hindu nationalism, we can discern how the postcolonial state responds to a range of nationalist and international ideologies and imperatives to frame counterterror legislation and repurpose colonial logics of law-making. Colonial logics become an instrument for seeking legitimacy both in the international system and legitimising Hindu nationalist ideologies.

Postcolonial criminalisation of collective action

Recent amendments to the Unlawful Activities Amendment Act (UAPA) 1967 by the Hindu-right wing BJP government considerably expanded the ambit of counterterror legislation. A colonial governing logic of collective criminalisation of communities is considerably augmented by the right-wing state. Not only are particular communities penalised by counterterror laws but all forms of collective political action involving lawyers, civil society activists from multiple communities are targeted by the state under these laws. Counterterror legislation is invoked capaciously and expansively to target various forms of collective organisation and protests against the government of the day as well as create a pervasive atmosphere of suspicion, paranoia, and fear among citizens. Any form of collective organisation by citizens such as a strike, protests, a road blockade can be viewed with suspicion and framed as a potential terror activity by the state. The 2019 amendment to the UAPA allowed the government to designate an individual a "terrorist" whereas previously the law focused on the proscription of organisations.

In several recent UAPA cases the accused are activists, lawyers, individuals from multiple caste, class, and religious backgrounds who were involved in ordinary citizenship mobilisations and protests. One such case is the incarceration of Dalit activists and other civil society members gathered at a public meeting in Bhima Koregaon. This case, referred to as the Bhima Koregaon case in the popular press, involved a public event where activists, politicians as well as retired judges had come together for an annual celebration of the battle of Bhima Koregaon. This annual event is a commemoration of a battle which took place in 1818 in which Dalit soldiers of the British army had defeated the soldiers of Peshwa Baji Rao, a Brahmin. In this case, some of the accused under the UAPA were Varavara Rao, a poet, Sudha Bhardwaj, an activist working on tribal rights and an academic, Gautam Navlakha, a writer and a researcher, and Arun Ferreira and Vernon Gonsalves, both activists. The accused tribal right activists, lawyers, and academics were only vaguely framed as members of a terrorist organisation.

A similar case involves the expansive use of the counterterror legislation along with other criminal laws during the Delhi riots. In 2020, riots broke out in the north-eastern parts of Delhi following protests against the controversial Citizenship Amendment Act 2019, a legislation which proposed to fast-track citizenship for Hindu, Sikh, Parsi, Jain, Buddhist, and Christian migrants from neighbouring Muslim majority countries Pakistan, Bangladesh, and Afghanistan to India and excluded Muslim migrants from this route. The Delhi police filed chargesheets against 15 accused persons in the Delhi riots case where they invoked various sections of the Unlawful Activities Prevention Act 1967 along with the Indian Penal Code. The accused in this case included students of Jawaharlal Nehru University (JNU), a well-known academic institution known for its left-wing activism and scholarship, and Jamia Milia Islamia, a minority educational institution (Sharma 2020).

An accused, Natasha Narwal, a doctoral student at the Centre for Women's Historical Studies at JNU, was first charged under several sections of the Indian Penal Code including 147 (rioting), 148 (rioting armed with deadly weapons), 149 (unlawful assembly), 120B (criminal conspiracy to commit an offence) and was subsequently also charged under sections 13 (unlawful activity), 16 (punishment for terrorist act), 17 (raising funds for a terrorist act), and 18 (conspiracy preparatory to the

commission of a terrorist act) of the Unlawful Activities Prevention Act 1967. In the Delhi case, counterterror legislation is invoked when Muslim citizens as well as other civil society activists protest a legislation that ostensibly discriminates against Muslims. The invocation of counterterror laws along with a wide range of other criminal laws in these instances show how terrorism is regulated through a surfeit of legislation in a manner reminiscent of the infrastructures of colonial hyperlegality. As is evident from the above cases, counterterror laws have been invoked in response to protests against the violations of the rights of Dalit and Muslim communities. The invocation of counterterror laws in these instances reproduces colonial logics of difference on the lines of caste and religion that informed the criminalisation of entire communities. These colonial logics of collective criminality are reproduced and further expanded to criminalise any form of collective action.

Morality of the state and collective punishment

In India, the spectre of terrorism has percolated into legislation that regulates inter-faith marriage and religious conversions even though these are not explicitly counterterror legislations. In contemporary India, terror laws are not merely creating new forms of collective criminality but finding expression in legislation that does not directly pertain to terrorism. The terror laws are therefore becoming sites where a gendered morality of the state is performed. One example of this phenomenon is the proliferation of the "love-jihad" campaign that stigmatises religious conversions for the purpose of inter-faith marriages in some states in India and the consequent passage of love-jihad laws. In the love jihad cases, an excess of legality enacted by the postcolonial state is linked to a global narrative of Islamophobia and "Islamic terrorism" and Hindu nationalist tropes of saving Hindu women from avaricious Muslim men. A colonial logic of collective criminality is hence refashioned by the gendered ideology of Hindu nationalism and the legal apparatus of Hindu nationalist statecraft (Nielsen and Nilsen 2021). Several legislations by the state governments such as Uttarakhand and Uttar Pradesh have imported the logic of love jihad and demonstrate a fear of "Islamic terrorism" even if they do not explicitly use the words "love-jihad".

The trope of love-jihad is invoked by the Hindu right in India to refer to Muslim men marrying Hindu girls with an aim to convert them to Islam (Nielsen and Nilsen 2021, 1–18). The love jihad campaigns by the Hindu right are premised on the idea that "Muslim men seduce, convert, marry, and have children with non-Muslim women to ensure that the Muslim minority in India becomes a majority" (Nielsen and Nilsen 2021). According to Hindu nationalist groups, conversion to Islam is a sinister conspiracy that threatens the Hindu majority and national unity in India. The trope of "love-jihad" is closely tethered to a global politics of the War on Terror and Islamophobia post 9/11. Islamophobia and anti-Muslim politics in India came to be closely tethered to the post 9/11 narrative of the Global War on Terror and subsequent securitisation of Islam (Frydenlund and Leidig 2022). Love jihad is an example of a post 9/11 grammar of Islamophobia, manifest in the use of the tropes of "Islamic terrorism", being exported across the world and vernacularised to address local concerns. Hindu nationalist activists have expanded the meaning of jihad to characterise inter-faith marriages which they construe as a form of terrorism through seduction and marriage "under the false pretence of love" (Frydenlund and Leidig 2022).

The trope of love jihad not only builds upon existing social stigma around inter-faith marriages in India but also mobilises conspiracy theories about how Muslim youth are receiving "funds from abroad for the purchase of designer clothes, vehicles, mobile phones, and expensive gifts in order to woo Hindu women" (Frydenlund and Leidig 2022, 5). The love-jihad campaigns draw upon a standard trope of the avaricious, sexually depraved Muslim male who is out to convert and violate Hindu women that has been a mainstay of Hindu nationalist ideology. This narrative also resides in an older Hindu nationalist impulse to protect the Hindu woman considered a vessel of cultural nationalism and a repository of the Hindu nation (Jaffrelot 1996).

Colonial logics and postcolonial legitimacy in Egypt

The story of British colonial activities in Egypt differs from the more "traditional" forms of colonialism that Britain enforced in India. As a Protectorate of the British Empire for a significant part of the twentieth century, Egypt's claim to independence was technically acknowledged by their British occupiers, on the condition, however, that the only way to advance their claim was through European control (Gani 2019; Mitchell 2002, 90). The British power instituted some key legal thinking and tools when it came to security practices that impacted the style of governance in Egypt significantly (Brown 1990; Brown 1995). However, concurrently, the legal and security architecture that developed throughout the British occupation was of a hybrid nature, as the British power drew upon local forms of law and government that had themselves been formed through the previous Ottoman and French colonial periods (Abozaid 2022; Alzubairi 2019; Brown 1990; 1995; Ezzat 2020; Fahmy 2012; Ismail 2006).

As this section shows, therefore, postcolonial Egypt blends authoritarian tools from various periods in an erratic and ambiguous style: since the 1952 independence, it has perpetuated the anxieties of the colonial state around political "threats" marked by class, religion, and gender, and it has relied upon many of the same legal and governmental tools to pursue "terrorist" and "immoral" entities. Under the scrutiny of a global society, Egypt relies on similar claims to legitimacy via the "rule of law" that the British did when rolling out martial law in 1914. Global Islamophobic tropes that have taken hold of the world since 9/11 have also provided the Egyptian state with a justification for proscribing its biggest political rival, the Muslim Brotherhood, as a terrorist organisation. However, power dynamics have also shifted, as the Egyptian state has to negotiate a power struggle against this popular group.

Political anxiety in British colonial Egypt

When Britain invaded and began occupying Egypt in 1882, citing the necessity of economic reform, there was already a complex legal and governmental system in place that, as Ezzat (2020), Fahmy (2012) and Brown (1990, 1995) argue had shaped Egyptian structures of law and government and the production of Egyptian subjectivities therein (see also Esmeir 2012). In response to this lack of control, the first Consul-General of Egypt, Lord Cromer, coveted the implementation of martial law, describing Egypt as a "lawless" place and in so doing denied the existence of local knowledge (Brown 1990; Esmeir 2012). It was not until 1914, with the beginning of the First World War that British administrators were finally able to implement martial law with the agreement of the British Parliament

back home. Therefore, it was precisely the *lack* of British control over Egypt and the political anxiety associated with it that played a crucial role in the development of oppressive security tools in Egypt and their persistence across various regimes in the modern history of the postcolonial Egyptian state. This period of upheaval and insecurity gave the British the justification to promulgate numerous laws that would come to take on a more permanent nature in postcolonial Egypt (Alzubairi 2019).

Martial law was implemented in 1914 but was framed as a "civilising" and "humane" tool that would provide an overarching structure of security, setting an "unfamiliar standard of care and deliberation".[5] In reality, this law allowed the British to infiltrate further into administrative and civil architecture, to seize goods and services for use of the British troops, and provided new administrative avenues to pursue and pre-empt any possible uprisings or conspiracies invariably associated with nationalist and religious groups (Gani 2019; Mitchell 2011), rural areas considered to be home to vagrant "dangerous" individuals (Brown 1995) and working class areas of cities (Ismail 2006). This fear was particularly connected to anti-colonial nationalist parties and eventually the Muslim Brotherhood, which was founded in 1928. Fearing that the group would create a new Egyptian state, the British carried out a campaign of suppression which "continued after the establishment of the republic and until this day" (Alzubairi 2019, 109–110). For Esmeir (2012, 2), the broad application of western law tied Egyptian subjectivities to the ideal of "progressive" and "civilised" institutions: "the human came into being as the teleology of modern positive law: its absence, law asserted, indicated a state of dehumanization or indeed inhumanity, that is, a state of cruelty, instrumentalization, and depravity".

Other statute-based laws were promulgated simultaneously that provided increasing powers to the executive and developed new statuses within the law and new avenues for the special treatment of certain groups, just as Hussain's (2007b) theory on hyperlegality suggests. To give an example, Law 10/1914 for Assembly was passed alongside the 1914 declaration of martial law as a measure to control and suppress any gatherings that could be construed as disrupting public order, as stipulated in section 2 of the martial law proclamation (Cairo Institute for Human Rights 2017). This law has a particular collective framing that provided for the mass arrest and prosecution of "assembled persons . . . even if the assembled persons harbour no criminal intent" (Cairo Institute for Human Rights 2017, 32). Collective liability means that all defendants become principal perpetrators in the assembly and are subject to criminal liability as accomplices in the most severe crime they committed (Cairo Institute for Human Rights 2017: 59). As Singh (2012) notes, nineteenth-century British narratives of "collectively criminal actions" were those framed as being in opposition to the colonial authority, and legitimised different legal structures for so called criminal groups. This colonial collective framing worked to differentiate groups of subjects before the law from ordinary individual subjects and framed them as requiring extraordinary methods of containment and judgement within the law. This is a key piece of colonial thinking that centres the state as the main entity in need of protecting and frames any assemblies as inherently a political threat while at the same time providing a measure of ambiguity around what consists of a "threat".

The architecture of security law-making throughout this period therefore, was an expanding set of laws that provided a veneer of legitimacy through the claim to "civilisation" and the "rule of law", that all the while set up new special avenues of treatment for "threatening" groups. The security tools and thinking developed over this period and the

political "threats" to the British became those to the Egyptian government also (Abozaid 2022). This is partly because top-down decolonisation as developed in the Wilsonian sense created a "hierarchy and competition for formerly colonised people to gain membership of the club of civilisation" (Gani 2019, 656). Therefore, the Egyptian elite throughout this period took on the theories and tools of the British as a means to formulate legitimacy (Abozaid 2022, 48). As the Egyptian government began to take more control (by nominal independence, in 1923 and then full independence in 1952), martial law and powers that provided preventative arrests were written into the new constitutions of the postcolonial state as a means to retain control and deal with dissent.

Postcolonial law and legitimacy

In postcolonial Egypt, legal tools have been consistently used to securitise the state all the while providing a veneer of legitimacy. Emergency law has been used almost consistently to target political opponents of the President, and indeed this emergency law was developed from British martial law as mentioned above (Alzubairi 2019; Ezzat 2021; Hamzawy 2017; Egyptian Independent 2021). Throughout the rules of Presidents Gamal Abdel Nasser (1956–1970), Anwar Sadat (1970–1981) and Hosni Mubarak (1981–2011), the creation of special tribunals and exceptional courts were used to shut the Muslim Brotherhood out of the political arena.

Two years after the 1952 revolution that finally ousted the remaining British from Egypt, the People's Court was created under the new emergency law to deal with the Muslim Brotherhood (Ezzat 2021, 299), perpetuating colonial anxieties over this group. It was no coincidence that this court was set up just as the newly independent government needed to make changes to the style of governing to push the country in a new direction, that of protectionism and nationalisation. The Court's mandate was broad, setting no limits for interpretation, it allowed for the trial of Brotherhood members and sympathisers (Alzubairi 2019, 128–130). The mandate of the court was to try "actions considered as treason against the Motherland or against its safety internally and externally as well as acts considered as directly against the present regime or against the bases of the Revolution" (Alzubairi 2019). Shortly afterwards, the new President Nasser promulgated Law 162/1958 Concerning the State of Emergency which helped establish the separate system of military justice under which civilians could be tried (Reza 2007, 532–540). This state of emergency lasted until 1980. After a year's break it was renewed following the assassination of President Anwar Sadat by a member of the Muslim Brotherhood, again by President Hosni Mubarak in 2006 until after the 2011 Egyptian revolution.

Egypt's anxieties over legitimacy and sovereignty have been laid bare perhaps more than ever in the continuing mass arrests enacted by the government of President El-Sisi since the 2011 Egyptian revolution. At the same time, the declaration of the Global War on Terror and the Islamophobia perpetuated therein provided Egypt, like other states, with the cloak of legitimacy for its draconian counterterrorism programme. On the ground, framing of "threat" to the state has expanded significantly along increasingly "moral" lines with the promulgation of new counterterrorism laws that provide vague definitions of terrorism. The classification of "political threat" has been reframed to suit the anxieties of the neoliberal climate yet colonial tools continue to be relied upon to provide the security infrastructure.

Following the Security Council Resolution 1373 (2001) demand that states worldwide adopt preventive counterterrorism legislation, Egypt, like all states, was presented with a legalistic framing through which it can claim international legitimacy all the while enforcing mass arrests and disappearing its citizens. El-Sisi quickly oversaw the passing of numerous other pieces legislation and executive orders that work in tandem with terrorism laws to broaden the definition of terrorism and, similar to the case of India, work upon a colonial frame to create special avenues in the law and to widen the definition of terrorism (Hussain 2007b). Laws increasingly used alongside terrorism legislation include laws that govern assembly and protest (Law 10/1914 on Assembly and Law 107/2013 on Meetings and Protests), NGOs (Law 70/2017), cybercrime (Law 175/2018), and additions to the penal code (Presidential Decree 128/2014 amended article 78 of the penal code).

Upon promulgation, Laws 97/1992 and 94/2015 concerning terrorism included broad definitions of terrorism so as to facilitate the securitisation and suppression of political dissent. The broad range of acts included in these definitions provides for criminalisation of a wide range of different people and groups, suggestive of the Egyptian state's desire to use such laws primarily as a tool to securitise society and suppress dissent. Such definitions easily encompass protestors and trade unionists within the remit of acts of terrorism and indeed are often used alongside laws on assembly and protest to securitise freedom of speech. During the 2011 Egyptian revolution when protestors demanded "bread, freedom, social justice" they also challenged the suffocating use of emergency laws by the Egyptian state (CIHRS, 2017; AhramOnline 2011; Human Rights Watch 2013). When Law 94/2015 for Combatting Terrorism was promulgated, President El-Sisi explained:

> We don't have any interest of putting any citizen under detention, journalists or otherwise, outside the rule of law . . . we are trying very hard after four years of turbulence to regain the rule of law and to uphold the independence of the judiciary. (Keene 2015)

In such moments, the tension between a lack of consent from the Egyptian public and a need to demonstrate legitimacy to the international community are laid bare. Here we see that, similar to the Indian case, the expanding architecture of counterterrorism laws resonates with the colonial state's hyperlegal structure, even as they are refashioned within the postcolonial state to acquire legitimacy.

Post-independence "Islamic terrorism"

As a Muslim majority country, the relationship with "Islamic terrorism" is navigated differently in Egypt than it is in India. The post-9/11 global acceptance of Islamophobia provided Egypt with more legitimacy in its persecution of its main political rival, the Muslim Brotherhood. However, since Egyptian independence, postcolonial Egypt has been characterised by a persistent struggle for hegemony and power between the state and the Muslim Brotherhood which has altered the power dynamics from one of colonial hierarchy to one of postcolonial ambiguity. The Egyptian state has therefore had to devise new ways to forge legitimacy as it has navigated a power struggle with one of the country's most popular religious and political groups. Under the watch of the

international community, Egypt continues to rely upon tools and anxieties instituted by the colonial power especially in its denouncement of the "Islamic" "collective" as a political threat justified through the language of the "rule of law".

Gani (2019, 664) explains that at the end of the British Protectorate, the Muslim Brotherhood promised its own alternative to the western construction of statehood and decolonisation, and became extremely popular by providing community services where the state fell short. The state has been in constant tension with the group, shaping many of its counterterror tools around it in a similar way to the British colonial power. For instance, in 2007, following concerns that the Muslim Brotherhood was gaining popularity in Egypt (Al-Anani 2015), changes were made to the Constitution to restrict challenges to the Mubarak government. Changes in Article 179 of the Constitution authorised the President to "refer all cases [regarding terrorism] to any court, including the ordinary courts" (Ezzat 2021, 299–300), and to suspend constitutional guarantees for rights of liberty and privacy in the investigation of terrorist activity. This new article allowed the president in ordinary times to order civilians to be tried in military courts (Brown, Dunne, and Hamzawy 2007). Following this, the broad definition of terrorism was used to detain members of the Muslim Brotherhood and transfer their cases to Military and Emergency State Security Courts where many resulted in the death penalty (Chiha 2013, 115–117). In such a way, the development of special forms of treatment within the space of Egyptian law has been concurrent with major political anxieties of the Egyptian state and has also perpetuated colonial anxieties around this particular group.

The use of such colonial tools, however, has not afforded the construction of legitimacy that the Egyptian state has sought, as indeed the very use of these colonial tools are in part what prevents postcolonial states from achieving hegemony (Salem 2020; Abozaid 2022, 49). Thus, the illusion of legitimacy must be constructed for both internal groups and the international community in new ways. For instance, Egypt has seen periods in which the Muslim Brotherhood is tolerated and even encouraged. As Abozaid (2022, 56–62) shows, following increased incidences of violence from Islamist groups, Mubarak's hard-line approach to terrorism shifted somewhat to provide space for policies that provided some limited freedoms to the Muslim Brotherhood on the condition that it would engage in a reduction of violence and an ideological reorientation. Furthermore, following the 2011 Egyptian revolution, the Muslim Brotherhood gained significant popularity: its Freedom and Justice Party won 47 percent of parliamentary seats (Al-Anani 2015) which paved the way for the first democratically elected Muslim Brotherhood President of Egypt, Mohammed Morsi in 2012. However, Morsi's time in power was difficult and short-lived as a military coup deposed him and instated President Abdel Fattah el-Sisi, who swiftly designated the Muslim Brotherhood as a terrorist organisation which was legitimated within the global climate of Islamophobia.

While the Muslim Brotherhood itself has perpetrated political suppression and violence - including through Morsi's crackdown on protestors and media criticism, the torture of political detainees, and the effective permission of attacks on Coptic Egyptians (Pratt and Rezk 2019) - the licence that global norms of Islamophobia and counterterrorism have given the state to persecute its most significant political opposition as an "exceptional" threat was made visible in a 2014 case. 683 Muslim Brotherhood individuals faced multiple charges including vandalism, the premeditated intentional killing of 9 police officers, and belonging to a proscribed organisation (International Commission of Jurists 2016, 60).

This case was brought after a court in Minya originally found 681 of the accused collectively responsible, and later confirmed the death sentence for 183 of those found guilty.

Collective criminalisation and morality of the state

Within this shifting and ambiguous political climate, the burden of the broad label of "immorality" and "extremism" is particularly felt by other societal groups, such as working-class communities, women and queer groups (Amar 2013; Ismail 2006), especially following the global push to counter extremism. As Brown, Dunne and Hamzawy (2007) explain, internal divisions between leftists and the Muslim Brotherhood have been constructed through the shifting use of emergency law to both quell and placate the groups at different moments. The multiple and shifting forms of "threats" in Egypt exemplify the larger power struggles for the control of government in the postcolonial state but also rely upon longer histories of colonial security law-making that provide the logics behind and the tools for the justification of the suppression of "collective threats". We saw that a similar phenomenon was evident in India, where the targets of counterterrorism laws consist of a broad range of civil society actors and political dissidents loosely framed as a threat to security.

The colonial concept of collective threat continues to be upheld by courts in Egypt today and has applied in cases of mass arrest and trials of activists and journalists over the past decade using the Assembly Law (10/1914), providing for a blurriness within the definition of terrorism (Cairo Institute for Human Rights 2017, 54). By providing the state with the impetus to guard against collective threats broadly defined, what is understood as a "group" is drawn across logics of morality. Ismail (2006) demonstrates how such forms of surveillance persist in areas deemed "immoral" or "threatening" through the destruction and redevelopment of working-class areas in Cairo upon a security framework that draws through colonial logics. The state's attitude to "new popular quarters", she explains, is a hardline enactment of policing "involving the monitoring and patrolling of streets along with a range of other strategies designed to allow for state infiltration into everyday-life spaces" (Ismail 2006, xxx). Women and queer and transgender Egyptians have been routinely framed as a danger to the "moral fabric of society" (Amar 2013; Egyptian Initiative for Personal Rights 2017; Pratt 2007). Specific nods to the family and morality are also directly incorporated into security laws, such as in Law 175/2018 Regarding Anti-Cyber and Information Technology Crimes which in chapter 3, article 25, criminalises "Anyone who infringes a family principle or value of the Egyptian society". In this way, "unrespectable" and "immoral" subjects are cast as simultaneously infringing on family principles and the values of the Egyptian state and can very quickly be cast as a threat to national security. This colonial legal concept that is underpinned by an understanding that collective action against the colonial authority is inherently more dangerous to the state, has been reframed through Egyptian counterterrorism which is characterised by ambiguity and agitation.

Conclusion

In conclusion, this article has argued that counterterrorism laws in the postcolonial states of India and Egypt can be understood as sites of negotiation with colonial modes of thinking that are entangled with these two states' need to produce a veneer of legitimacy. We have traced the persistence and reworking of colonial frames in both these postcolonial contexts and analysed the enmeshment of nationalist ideologies and international imperative that come together in the politics of counterterrorism.

We have shown how both states engage in practices of securitisation through the excessive application of laws or hyperlegality to combat political anxieties of sovereignty. The acceleration of legislation helps these states to both foreclose any space for dissent and to broaden definitions of threat or terrorism within the law all the while claiming legitimacy under the eyes of the international community. There is a particularly colonial characteristic to this practice, as hyperlegality works to create avenues for special treatment of particular groups within the law. The hierarchies of colonial law-making therefore persist in postcolonial India and Egypt. We saw this in India through the use of various different types of law such as preventive detention and counterterrorism, that work to create hierarchical systems of treatment. In Egypt, the almost consistent use of emergency law alongside laws on terrorism and assembly, among others, both creates hierarchies of treatment and forecloses spaces of freedom within the law.

We also demonstrated that colonial thinking persists and is reworked in the collective and identitarian effects that such laws have on an everyday basis in India and Egypt. This framing insists that collective criminal actions are those that pose a threat to the state and disregards such groups' right to individual trials before the law, instead sentencing them en masse. We demonstrated how in both states, the scope of criminality encompasses a broad range of groups and communities that can be framed as threats to the morals and values of the state at different times. This includes political opposition, activists, human rights defenders and minority communities. The collective framing, particularly detailed in the Egyptian Law 10/1914 on Assembly, demonstrates how large groups of people can be rendered equally culpable.

While colonial logics and structures persist, these have been re-written in postcolonial states, however. While we found that the demands of the Security Council to counterterrorism after 9/11 and the simultaneous upsurge in global Islamophobia provided both states with the impetus to tackle political rivalries, thus providing a veneer of legitimacy, this developed in distinctive ways. Egypt has developed a more ambiguous relationship with its political opponent, the Muslim Brotherhood, using counterterrorism at different moments of anxiety to expel the group and at other times, providing space for the group. The Indian Hindu nationalist state's use of counterterrorism against "Islamic terrorism" has predominantly helped to securitise its territorial claims.

These findings are significant because they demonstrate how colonial violence remains embedded, legally, and ideologically, within the present-day international system. Counterterrorism provides both states with a veil of legitimacy in the violent treatment of their citizens. Furthermore, the reason that such logics of suppression are so accepted is because they are a replication of European states' own methods of security, albeit in new forms. This argument therefore not only reinterprets the application of counterterrorism as part of broader securitising

modes of governance in these postcolonial states, thus refuting the state of exception framing, but further, is critical of approaches that draw defiant lines between "liberal" and "authoritarian" states or the Global North/Global South, posing instead an argument for thinking along "postcolonial" lines.

Notes

1. We are using the phrase "postcolonial states" to refer to Egypt and India as a means to recognise and interrogate the persistency of colonial logics that continue to structure global neoliberal developments.
2. This not only means looking at the different ways in which and reasons why post-colonial states deploy counterterrorism, but also critically reflecting on the conceptual tools we as researchers use and how far Eurocentric conceptualisations of the state are applicable in postcolonial cases (Guha, 1997; Ismail 2006; Parashar and Schulz 2021).
3. Hindu nationalism as a political project aims to create an ethnic Hindu national consciousness and a Hindu nationalist state. For a detailed history of the rise of Hindu nationalism see Jaffrelot (1996).
4. https://www.narendramodi.in/text-of-prime-minister-narendra-modi-s-intervention-during-12th-brics-virtual-summit-552432. Accessed 17th July, 2011.
5. "Martial Law in Egypt, 1914–23" pamphlet written by Sir M.S. Amos, August 1925, 8.

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